

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT JOSEPH MARSHALL,

Defendant.

Case No. 2:01-cr-00130-LDG

ORDER

The defendant, Robert Joseph Marshall, filed a motion pursuant to 28 U.S.C. §2255 to vacate, set aside, or correct his sentence (#229). The United States moved to dismiss (#232), asserting that Marshall's §2255 petition is untimely. Marshall has not filed an opposition.

Pursuant to 28 U.S.C. §2255(f), this court may consider Marshall's motion only if he filed his motion within one year of the latest of (1) the date the judgment of conviction became final, (2) the date on which an impediment to filing the motion is removed, (3) the date on which the right asserted was first recognized by the United States Supreme Court, or (4) the date on which the facts supporting the claim could have been discovered through the exercise of due diligence.

1 As Marshall filed his motion on July 20, 2009, his motion is timely only if one of the
2 above dates is after July 20, 2008. Marshall's judgment of conviction became final on April
3 14, 2008, when the Supreme Court denied his certiorari petition, and thus occurred more
4 than a year prior to the date Marshall filed his motion. Marshall has neither alleged nor
5 argued that government action impeded the filing of his motion. His motion does not seek
6 relief pursuant to a right first recognized by the Supreme Court after July 20, 2008. Finally,
7 Marshall has neither alleged nor argued that his claims rest upon facts that could not have
8 been discovered, with the exercise of due diligence, prior to July 20, 2008. Accordingly, as
9 Marshall did not timely file his motion,

10 THE COURT **ORDERS** that the United States' Motion to Dismiss (#232) is
11 GRANTED.

12 THE COURT FURTHER **ORDERS** that Robert Joseph Marshall's Motion to Vacate,
13 Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255 (#229) is DISMISSED.

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15 DATED this 14 day of October, 2010.

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18 Lloyd D. George
19 United States District Judge
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